

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ACCESS 4 ALL, INC., and PETER  
SPALLUTO,

Plaintiffs,

v.

BRE/SWISS, LLC,

Defendant.

Civil Action  
No. 04-12154-MLW

**ANSWER**

Defendant BRE/Swiss, LLC ("BRE/Swiss") responds to the separately-numbered paragraphs of the Complaint as follows:

1. Admitted.
2. Admitted.
3. BRE/Swiss lacks knowledge or information sufficient to admit or deny the allegations of paragraph 3.
4. BRE/Swiss lacks knowledge or information sufficient to admit or deny the allegations of paragraph 4.
5. Admitted.
6. BRE/Swiss admits that the ADA is in effect and speaks for itself, but denies all other allegations of paragraph 6.
7. BRE/Swiss admits that the ADA is in effect and speaks for itself, but denies all other allegations of paragraph 7.
8. BRE/Swiss admits that the ADA is in effect and speaks for itself, but denies all other allegations of paragraph 8.

9. BRE/Swiss admits that the ADA is in effect and speaks for itself, but denies all other allegations of paragraph 9.

10. BRE/Swiss admits that the ADA is in effect and speaks for itself, but denies all other allegations of paragraph 10.

11. Denied.

12. BRE/Swiss lacks knowledge or information sufficient to admit or deny the allegations of paragraph 12.

13. Denied.

14. Denied.

15. Admitted.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. BRE/Swiss denies the allegations of paragraphs 20, but intends in good faith to conduct a site inspection at the Property (currently scheduled for January 27, 2005).

21. BRE/Swiss admits that the Act and regulations promulgated thereunder, as interpreted by applicable court decisions, and define the scope of BRE/Swiss's obligations with respect to the subject Property, but denies all other allegations of paragraph 21.

22. BRE/Swiss admits that the Act and regulations promulgated thereunder, as interpreted by applicable court

decisions, define the scope of BRE/Swiss's obligations with respect to the subject Property, but denies all other allegations of paragraph 21.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. BRE/Swiss denies that any injunctive relief is appropriate with respect to the subject Property.

#### **FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Facilities modifications or accommodations which are readily achievable to improve access to the Property have either been accomplished, are in progress and nearing completion, or are planned for implementation in the near future as a result of proactive, voluntary efforts by BRE/Swiss to comply with the ADA.

#### **THIRD AFFIRMATIVE DEFENSE**

To the extent, if any, that the facilities and/or practice or policy modifications identified by plaintiff in the Complaint have not been accomplished, the requested modifications would or

may fundamentally alter the nature of the Property and its attendant services as a public accommodation.

**FOURTH AFFIRMATIVE DEFENSE**

To the extent, if any, that architectural or other barriers to access to the subject Property for persons with disabilities, as alleged in the Complaint, have not been removed, such removal is not readily achievable and would impose an undue burden upon BRE/Swiss.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs lack standing to bring some or all of the claims set forth in the Complaint.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs have waived the claims alleged in the Complaint.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs are estopped to assert the claims alleged in the Complaint.

WHEREFORE, BRE/Swiss respectfully requests:

- A. that the Complaint be dismissed with prejudice;
- B. that BRE/Swiss be awarded its costs, including attorneys' fees; and
- C. that BRE/Swiss be granted such other relief as is just and proper.

BRE/SWISS, LLC

By its attorneys,

/s/

Gordon P. Katz (BBO #261080)  
HOLLAND & KNIGHT LLP  
10 St. James Avenue  
Boston, MA 02116  
Tel: (617) 523-2700  
Fax: (617) 523-6850  
Email: gordon.katz@hklaw.com

and

Of Counsel:

Mary A. Lau  
Florida Bar No. 228303  
LAU, LANE, PIEPER, CONLEY &  
McCREADIE, P.A.  
100 South Ashley Drive, Suite 1700  
P.O. Box 838  
Tampa, FL 33601-0838  
Tel: (813) 229-2121  
Fax: (813) 228-7710  
Email: mlau@laulane.com

Dated: December 1, 2004  
Boston, Massachusetts